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SUPREME COURT OF THE UNITED STATES

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ARIZONA v. CALIFORNIA

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

No. 8, Orig. Argued April 25, 2000– Decided June 19, 2000

This litigation began in 1952 when Arizona invoked this Court's original jurisdiction to settle a dispute with California over the extent of each State's right to use water from the Colorado River system. The United States intervened, seeking water rights on behalf of, among others, five Indian reservations, including the Fort Yuma (Quechan) Indian Reservation, the Colorado River Indian Reservation, and the Fort Mojave Indian Reservation. The first round of the litigation culminated in *Arizona v. California*, 373 U. S. 546 (*Arizona I*), in which the Court held that the United States had reserved water rights for the five reservations, *id.*, at 565, 599–601; that those rights must be considered present perfected rights and given priority because they were effective as of the time each reservation was created, *id.*, at 600; and that those rights should be based on the amount of each reservation's practicably irrigable acreage as determined by the Special Master, *ibid.* In its 1964 decree, the Court specified the quantities and priorities of the water entitlements for the parties and the Tribes, *Arizona v. California*, 376 U. S. 340, but held that the water rights for the Fort Mojave and Colorado River Reservations would be subject to appropriate adjustment by future agreement or decree in the event the respective reservations' disputed boundaries were finally determined, *id.*, at 345. The Court's 1979 supplemental decree again deferred resolution of reservation boundary disputes and allied water rights claims. *Arizona v. California*, 439 U. S. 419, 421 (*per curiam*). In *Arizona v. California*, 460 U. S. 605 (*Arizona II*), the Court concluded, among other things, that various administrative actions taken by the Secretary of the Interior, including his 1978 order recognizing the entitlement of the Quechan Tribe (Tribe) to the disputed boundary lands of the Fort Yuma Reservation did not constitute final determinations of reservation boundaries for purposes of the 1964 decree.

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Id., at 636–638. The Court also held in *Arizona II* that certain lands within undisputed reservation boundaries, for which the United States had not sought water rights in *Arizona I*— the so-called “omitted lands”— were not entitled to water under res judicata principles. *Id.*, at 626. The Court’s 1984 supplemental decree again declared that water rights for all five reservations would be subject to appropriate adjustments if the reservations’ boundaries were finally determined. *Arizona v. California*, 466 U. S. 144, 145. In 1987, the Ninth Circuit dismissed, on grounds of the United States’ sovereign immunity, a suit by California state agencies that could have finally determined the reservations’ boundaries. This Court affirmed the Ninth Circuit’s judgment by an equally divided vote.

The present phase of the litigation concerns claims by the Tribe and the United States on the Tribe’s behalf for increased water rights for the Fort Yuma Reservation. These claims rest on the contention that the Fort Yuma Reservation encompasses some 25,000 acres of disputed boundary lands not attributed to that reservation in earlier stages of the litigation. The land in question was purportedly ceded to the United States under an 1893 Agreement with the Tribe. In 1936, the Department of the Interior’s Solicitor Margold issued an opinion stating that, under the 1893 Agreement, the Tribe had unconditionally ceded the lands. The Margold Opinion remained the Federal Government’s position for 42 years. In 1946, Congress enacted the Indian Claims Commission Act, establishing a tribunal with power to decide tribes’ claims against the Government. The Tribe brought before the Commission an action, which has come to be known as Docket No. 320, challenging the 1893 Agreement on two mutually exclusive grounds: (1) that it was void, in which case the United States owed the Tribe damages essentially for trespass, and (2) that it constituted an uncompensated taking of tribal lands. In 1976, the Commission transferred Docket No. 320 to the Court of Claims. In the meantime, the Tribe asked the Interior Department to reconsider the Margold Opinion. Ultimately, in a 1978 Secretarial Order, the Department changed its position and confirmed the Tribe’s entitlement to most of the disputed lands. A few months after this Court decided in *Arizona II* that the 1978 Secretarial Order did not constitute a final determination of reservation boundaries, the United States and the Tribe entered into a settlement of Docket No. 320, which the Court of Claims approved and entered as its final judgment. Under the settlement, the United States agreed to pay the Tribe \$15 million in full satisfaction of the Tribe’s Docket No. 320 claims, and the Tribe agreed that it would not further assert those claims against the Government. In 1989, this Court granted the motion of Arizona, California, and two municipal water districts (State

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parties) to reopen the 1964 decree to determine whether the Fort Yuma, Colorado River, and Fort Mojave Reservations were entitled to claim additional boundary lands and, if so, additional water rights. The State parties assert here that the Fort Yuma claims of the Tribe and the United States are precluded by *Arizona I* and by the Claims Court consent judgment in Docket No. 320. The Special Master has prepared a report recommending that the Court reject the first ground for preclusion but accept the second. The State parties have filed exceptions to the Special Master's first recommendation, and the United States and the Tribe have filed exceptions to the second. The Master has also recommended approval of the parties' proposed settlements of claims for additional water for the Fort Mojave and Colorado River Reservations, and has submitted a proposed supplemental decree to effectuate the parties' accords.

Held:

1. In view of the State parties' failure to raise the preclusion argument earlier in the litigation, despite ample opportunity and cause to do so, the claims of the United States and the Tribe to increased water rights for the disputed boundary lands of the Fort Yuma Reservation are not foreclosed by *Arizona I*. According to the State parties, those claims are precluded by the finality rationale this Court employed in dismissing the "omitted lands" claims in *Arizona II*, 460 U. S., at 620–621, 626–627, because the United States could have raised the Fort Yuma Reservation boundary lands claims in *Arizona I*, but deliberately decided not to do so. In rejecting this argument, the Special Master pointed out that the Government did not assert such claims in *Arizona I* because, at that time, it was bound to follow the Margold Opinion, under which the Tribe had no claim to the boundary lands. The Master concluded that the 1978 Secretarial Order, which overruled the Margold Opinion and recognized the Tribe's beneficial ownership of the boundary lands, was a circumstance not known in 1964, one that warranted an exception to the application of *res judicata* doctrine. In so concluding, the Special Master relied on an improper ground: The 1978 Secretarial Order does not qualify as a previously unknown circumstance that can overcome otherwise applicable preclusion principles. That order did not change the underlying facts in dispute; it simply embodied one party's changed view of the import of unchanged facts. However, the Court agrees with the United States and the Tribe that the State parties' preclusion defense is inadmissible. The State parties did not raise the defense in 1978 in response to the United States' motion for a supplemental decree granting additional water rights for the Fort Yuma Reservation or in 1982 when *Arizona II* was briefed and argued. Unaccountably, the State parties first raised their *res judicata* plea in 1989, when they

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initiated the current round of proceedings. While preclusion rules are not strictly applicable in the context of a single ongoing original action, the principles upon which they rest should inform the Court's decision. *Arizona II*, 460 U. S., at 619. Those principles rank res judicata an affirmative defense ordinarily lost if not timely raised. See Fed. Rule Civ. Proc. 8(c). The Court disapproves the notion that a party may wake up and effectively raise a defense years after the first opportunity to raise it so long as the party was (though no fault of anyone else) in the dark until its late awakening. Nothing in *Arizona II* supports the State parties' assertion that the Court expressly recognized the possibility that future Fort Yuma boundary lands claims might be precluded. 460 U. S., at 638, distinguished. Of large significance, this Court's 1979 and 1984 supplemental decrees anticipated that the disputed boundary issues for all five reservations, including Fort Yuma, would be "finally determined" in some forum, not by preclusion but on the merits. The State parties themselves stipulated to the terms of the 1979 supplemental decree and appear to have litigated the *Arizona II* proceedings on the understanding that the boundary disputes should be resolved on the merits, see, e.g., 460 U. S., at 634. Finally, the Court rejects the State parties' argument that this Court should now raise the preclusion question *sua sponte*. The special circumstances in which such judicial initiative might be appropriate are not present here. See *United States v. Sioux Nation*, 448 U. S. 371, 432 (REHNQUIST, J., dissenting). Pp. 11–17.

2. The claims of the United States and the Tribe to increased water rights for the disputed boundary lands of the Fort Yuma Reservation are not precluded by the consent judgment in Docket No. 320. The Special Master agreed with the State parties' assertion to the contrary. He concluded that, because the settlement extinguished the Tribe's claim to title in the disputed lands, the United States and the Tribe cannot seek additional water rights based on the Tribe's purported beneficial ownership of those lands. Under standard preclusion doctrine, the Master's recommendation cannot be sustained. As between the Tribe and the United States, the settlement indeed had, and was intended to have, claim-preclusive effect. But settlements ordinarily lack issue-preclusive effect. This differentiation is grounded in basic res judicata doctrine. The general rule is that issue preclusion attaches only when an issue is actually litigated and determined by a valid and final judgment. See *United States v. International Building Co.*, 345 U. S. 502, 505–506. The State parties assert that common-law principles of issue preclusion do not apply in the special context of Indian land claims. They maintain that the Indian Claims Commission Act created a special regime of statutory preclusion. This Court need not decide whether some consent judg-

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ments in that distinctive context might bar a tribe from asserting title even in discrete litigation against third parties, for the 1983 settlement of Docket No. 320 plainly could not qualify as such a judgment. Not only was the issue of ownership of the disputed boundary lands not actually litigated and decided in Docket No. 320, but, most notably, the Tribe proceeded on alternative and mutually exclusive theories of recovery, taking and trespass. The consent judgment embraced all of the Tribe's claims with no election by the Tribe of one theory over the other. The Court need not accept the United States' invitation to look behind the consent judgment at presettlement stipulations and memoranda purportedly demonstrating that the judgment was grounded on the parties' shared view, after the 1978 Secretarial Order, that the disputed lands belong to the Tribe. Because the settlement was ambiguous as between mutually exclusive theories of recovery, the consent judgment is too opaque to serve as a foundation for issue preclusion. Pp. 17–22.

3. The Court accepts the Special Master's recommendations and approves the parties' proposed settlements of the disputes respecting additional water for the Fort Mojave and Colorado River Reservations. Pp. 22–23.

Exception of State parties overruled; Exceptions of United States and Quechan Tribe sustained; Special Master's recommendations to approve parties' proposed settlements respecting Fort Mojave and Colorado River Reservations are adopted, and parties are directed to submit any objections they may have to Special Master's proposed supplemental decree; Outstanding water rights claims associated with disputed Fort Yuma Reservation boundary lands remanded.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, SOUTER, and BREYER, JJ., joined. REHNQUIST, C. J., filed an opinion concurring in part and dissenting in part, in which O'CONNOR and THOMAS, JJ., joined.